

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

GETTY IMAGES (US), INC., )  
                                )  
                                )  
Plaintiff,                 )  
                                )  
                                )  
v.                            )                              C.A. No. 23-135 (JLH)  
                                )  
                                )  
                                )  
STABILITY AI, LTD. and STABILITY                 )  
AI, INC.,                    )  
                                )  
                                )  
Defendants.

**PLAINTIFF'S UNOPPOSED MOTION FOR LEAVE TO  
FILE SECOND AMENDED COMPLAINT**

Plaintiff Getty Images (US), Inc. (“Getty Images”), through its undersigned counsel, hereby requests leave to file the Second Amended Complaint, as provided by Rule 15 of the Federal Rules of Civil Procedure. A copy of the Second Amended Complaint is annexed as Exhibit A. A copy of a redline that tracks the changes to the Amended Complaint is annexed as Exhibit B. Defendants do not oppose this request.

**I.       NATURE OF THE ACTION AND STAGE OF THE PROCEEDINGS**

Over a year ago, on February 3, 2023, Getty Images brought claims against Stability AI, Inc., a Delaware corporation, to redress harm caused by the unauthorized copying of some 12 million images and the associated captions and metadata from Getty Images’ websites to train a generative AI model; the provision of outputs that either infringed works on which the model was trained, contained false copyright management information, or both; infringing and diluting uses of Getty Images’ trademarks; and deceptive trade practices. D.I. 1. On March 29, 2023, Getty Images filed an Amended Complaint that, *inter alia*, named Stability AI, Ltd. (together with Stability AI, Inc., “Defendants”) as an additional defendant. D.I. 13.

On May 2, 2023, Defendants moved to dismiss or transfer this action to the Northern District of California. D.I. 16. Defendants conceded that Stability AI, Inc. is subject to personal jurisdiction in Delaware and that Stability AI, Ltd., a UK corporation, is subject to personal jurisdiction in the United States, but they contended that Stability AI, Ltd. is a necessary and indispensable party that is not subject to personal jurisdiction in Delaware. D.I. 17. The parties submitted a stipulation and proposed order concerning jurisdictional discovery on June 7, 2023, D.I. 21, and on January 26, 2024, the Court dismissed the Defendants' motion to dismiss or transfer without prejudice to re-file after the conclusion of jurisdictional discovery. D.I. 36. With the exception of two narrow categories that remain the subject of a pending discovery dispute (*see* D.I. 32, 33), jurisdictional discovery has been substantially completed.

Getty Images now seeks to file a Second Amended Complaint that includes additional allegations relating to personal jurisdiction, as well as other changes to reflect developments and new information learned since the filing of the Amended Complaint and the inclusion of Stability AI US Services Corporation, a Delaware corporation that was formed in March 2023, as an additional defendant.

Defendants do not oppose the filing of the Second Amended Complaint, but reserve the right to challenge the proposed Second Amended Complaint on all grounds.

## **II. ARGUMENT**

After a party has amended a pleading once as a matter of course, further amendments require consent of the adverse party or leave of the Court. Fed. R. Civ. P. 15(a). Leave to amend a complaint prior to trial is to be given freely when justice requires. Fed. R. Civ. P. 15(a)(2). Amendment should ordinarily be permitted absent a showing of “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment,

futility of the amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Third Circuit has “shown a strong liberality in allowing amendments” to “ensure[] that a particular claim will be decided on its merits rather than on technicalities.” *Dole v. Arco Chemical Co.*, 921 F.2d 484, 487 (3d Cir. 1990).

In this case, Plaintiff seeks to amend its complaint to add, *inter alia*, allegations learned through jurisdictional discovery that Stability AI, Inc. and Stability AI, Ltd. operate as a group and are alter egos of one another, as well as to address relevant developments since the filing of the Amended Complaint. Plaintiff also seeks to add Stability AI US Services Corporation as a defendant. As described below, justice is served because consideration of the factors weighs in favor of amendment.

**A. Amendment Is Timely.**

Plaintiff’s motion for leave to amend is timely. There is no scheduling order in place in this matter. There are no pending motions and no deadlines that will be affected by permitting amendment. Indeed, through the proposed amendment, Plaintiff directly addresses issues raised by Defendants in their since-dismissed motion to dismiss or transfer, which, if Defendants nonetheless elect to re-file a motion to dismiss, will make resolution of that motion more efficient. Simply put, this action remains at the outset with respect to resolution on the merits of Getty Images’ claims.

**B. There Has Not Been Undue Delay.**

Getty Images has not unduly delayed filing its motion for leave to amend. The motion seeking leave to amend is in direct response to the issues addressed in jurisdictional discovery. And, as noted above, there is no scheduling order in place in this matter, and there are no other deadlines that would be affected by permitting amendment. *See NHB Assignments LLC on behalf of Liquidating Tr. v. Gen. Atl. LLC*, No. CV 12-1020-SLR, 2013 WL 4630022, at \*3 (D. Del. Aug.

29, 2013) (granting motion for leave to amend and finding no undue delay where no scheduling order had been entered and no discovery had taken place except that related to diversity jurisdiction).

**C. Amendment Is Not Prejudicial.**

The Third Circuit has made clear that it is the opposing party's burden to demonstrate undue prejudice. *Dole*, 921 F.2d at 488 (quoting *Heyl & Patterson Int'l, Inc. v. F.D. Rich Housing of the Virgin Islands Inc.*, 663 F.2d 419, 426 (3d Cir.1981)). Here, Defendants do not oppose the filing of the proposed Second Amended Complaint.

**III. CONCLUSION**

For the foregoing reasons, Getty Images respectfully requests that the Court grant the unopposed motion for leave to file the proposed Second Amended Complaint.

Dated: July 2, 2024

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 2, 2024, a copy of the foregoing document was served on the counsel listed below in the manner indicated:

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AI, INC.,                )  
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Defendants.

**[PROPOSED] ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION  
FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

At Wilmington this \_\_\_\_ day of \_\_\_\_\_, 2024, having considered Plaintiff's Unopposed Motion for Leave to File Second Amended Complaint, and all papers and argument submitted therewith, IT IS HEREBY ORDERED that the motion is GRANTED.

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United States District Judge